

**STATE OF WISCONSIN**  
**Department of Health and Family Services**

**DHFS POLICY ON**  
**CONSULTATION**  
**WITH**  
**WISCONSIN'S INDIAN TRIBES**

March 10, 2005

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## **I. Introduction**

The various states have a unique legal relationship with sovereign American Indian Tribal governments, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws and court decisions. Wisconsin Executive Order #39, issued in February 2004, affirms the government-to-government relationship between the State of Wisconsin and American Indian Tribal governments located within the State of Wisconsin.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken, and to implement programs in a collaborative manner. The Wisconsin Department of Health and Family Services (DHFS) is committed to such government-to-government relations with the federally recognized Tribal governments of Wisconsin. The State will employ its best efforts to achieve positive outcomes from its consultation and collaboration. The intent of this policy is to improve the planning and delivery of health and human services to Tribal governments, Tribal communities, and Tribal people by developing principles and a process for consultation on human services policies in Wisconsin. It is for this purpose that this policy has been developed.

The Department of Health and Family Services is a comprehensive state agency, headed by a cabinet-level secretary, which has responsibility for establishing policies and providing services in a wide variety of program areas, including public health, child welfare, developmental disabilities, elderly, mental health, alcohol and other drug abuse, and other health and human services programs. Many of these services are provided directly through the State's legal and contractual relationship with county departments of human services, county departments of social services, county 51.42 and 51.437 boards, and local public health departments. Many DHFS services are also provided by Tribal governments through a contractual relationship between the DHFS and the individual Tribes.

Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status and its right to existence, self-government, and self-determination. The Department of Health and Family Services respects the fundamental principles that establish and maintain the relationship between Tribes and the DHFS and accord Tribal governments the same respect accorded to other governments.

The DHFS and Tribal governments have a history of cooperation and collaboration. In 1972, the DHFS recognized the unique status of American Indians with the creation of a Tribal liaison position. A few years later, the position evolved into the Tribal Affairs office with responsibilities that included government-to-government relations. The office continues to serve as a liaison to Tribal governments and American Indians around the state. The DHFS also has a long-standing contractual relationship with Tribal governments. It contracts an increasing number of health and human service programs to Tribes as the interest and capability to administer these programs grows. However, the nature and consistency of that cooperation and collaboration can and should be improved, which is the purpose of this consultation policy.

Both the DHFS and the Tribes have a responsibility for the provision of health and human services for Tribal members. As residents of the State of Wisconsin, Tribal members are equally entitled to those services afforded to all residents of the State. As members of a sovereign Tribal nation, Tribal members are entitled to those services afforded to all members of that Tribal nation. Whether the services are provided through Tribal agencies or directly through the DHFS or county agencies, it is critical that the Department of Health and Family Services administrators and Tribal leadership and their representatives consult with one another to assure that needed services are provided and received in a manner that is both efficient and effective.

## **II. Objectives**

The objectives of this policy are:

- A. To create a collaborative effort (relationship) to improve the health and well being of Tribal community members through the provision of efficient and effective health and human services.
- B. To formalize the process and expectations for the DHFS to implement a government-to-government relationship and to seek consultation with and participation of representatives of Tribal governments in policy development and program activities.
- C. To promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their representatives in the DHFS decision-making process.

## **III. Guiding Principles**

The DHFS is committed to improving and maintaining effective government-to-government relations with the Tribes. The development of mutual understanding, with cultural awareness and sensitivity, is necessary to effective consultation on policy and collaboration on program operations. Toward achieving this goal, the DHFS shall utilize the following principles in consulting on policy and on program issues with Tribal governments. Integration of these principles into DHFS planning and management activities will help produce positive and desired outcomes in health and human services for Tribal community members.

- A. Consultation involves respectful and timely communication with Tribal governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.
- B. Working directly with American Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.
- C. Consultation with Tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to directly affect American Indian Tribes or their members is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation.
- D. Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.
- E. It is important to recognize the uniqueness of each Tribe's culture, governmental structure and processes, demographics and geography (i.e., where Tribal members are located), and other factors.

## **IV. Purpose and Methods**

The State of Wisconsin, represented for purposes of this policy by its Department of Health and Family Services, with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, and other high-level matters of mutual concern.

The Wisconsin Department of Health and Family Services, together with the Wisconsin federally recognized Tribal governments, establishes this policy requiring consultation by and between these governments on DHFS policies and activities. This policy formalizes the long-standing collaborative relationship the DHFS and Tribal governments have established in contracting the provision of health and human services to American Indians in Wisconsin.

#### *A. Annual Meetings*

The Secretary of the Department of Health and Family Services shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the Secretary will be present, which must include invitations to, at a minimum, the following individuals (who may designate another individual with appropriate authority to attend):

- Chair, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chair, Lac Courte Oreilles Band of Lake Superior Chippewa
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chair, Menominee Indian Tribe of Wisconsin
- Chair, Oneida Tribe of Indians of Wisconsin
- Chair, Forest County Potawatomi Community
- Chair, Red Cliff Band of Lake Superior Chippewas
- Chair, Sokaogon Chippewa Community
- Chair, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Community
- Tribal Administrators and program staff as determined by the Tribal Leadership
- The Secretary of the Wisconsin Department of Health and Family Services
- DHFS administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the secretary and Tribal chairs and presidents. The schedule will take into account the desirability of allowing adequate time during even numbered years for development of Tribal biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting to review and evaluate the accomplishments and effectiveness of the previous year's DHFS implementation plan (see Subsection B.) and to establish mutual goals for the current year's implementation plan. The agenda shall also include a current DHFS organizational chart.

#### *B. Other Meetings*

The Secretary of the Department of Health and Family Services shall assume the responsibility for scheduling, in consultation with Tribal leadership, additional consultation sessions at his or her discretion or as deemed necessary by a majority of the Tribal Chairpersons or Presidents. In addition, Tribal Chairpersons or Presidents may request meetings or other consultation with the Secretary or other DHFS representatives.

#### *C. Annual Implementation Plan*

The DHFS shall establish, in conjunction with appropriate Tribal program staff and the DHFS Tribal Affairs Office, an annual implementation plan by which this government-to-government consultation policy shall be implemented. The implementation plan shall include:

- Programs: A list of programs and services available to Tribes, including an overview of DHFS programs and a DHFS organizational chart.
- Policy and Program Development: Description of new initiatives, programs, and policies affecting Tribes.
- Priorities: Priority issues for resolution in conjunction with the Tribes.

- Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and programs.
- Evaluation Process: The process to determine the effectiveness of the implementation plan with respect to the consultation process and to the programmatic, fiscal, and other aspects of applicable health and human services programs identified in the consultation plan.

#### *D. Training*

It shall be part of consultation agendas to establish training sessions at least once every six months for appropriate DHFS employees and other individuals. The purpose of this training is to educate DHFS employees regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty, Tribal government, and Tribal health and human service delivery systems. The DHFS and Tribal staff shall jointly develop curriculum for and conduct the training.

### **V. Resolution of Issues**

Throughout any given year, specific issues affecting one or more Tribes and the Department of Health and Family Services will arise. These issues may be raised by either a Tribe or the DHFS and may occur at various levels within either party. The following process is to be used when such issues arise.

#### *A. Initial Discussion*

When an issue arises and an employee of either a Tribe or the DHFS contacts an employee of the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the process described in Subsection B. will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Subsection C.

#### *B. Issues Requiring Higher Level Involvement*

If higher level involvement is needed, the issue will be raised to the appropriate level in the DHFS and Tribe for resolution. Within the DHFS, the Tribal Affairs Director will facilitate contact with the appropriate staff or management if required. Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue. It is recognized that some issues may not be able to be resolved to the satisfaction of all parties.

#### *C. Issues Affecting More Than One Tribe*

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the DHFS representative will make contact with representatives of all other affected Tribes. When possible, communication involving all of the potentially affected parties will occur and will be facilitated by a DHFS representative.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Subsection B.

## **VI. Representation of Tribal Governments on Committees and Workgroups**

The focus of this consultation policy is with individual Tribal governments. However, during the normal course of business, it is often necessary for the DHFS to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the DHFS. The DHFS will invite Tribal governments to be involved in such decision making and policy development.

### *A. Long-Term and Ongoing Bodies*

If the DHFS or its division establishes any ongoing or long-term advisory committee, commission, or similar body, the secretary or appropriate division administrator shall notify the Tribal chair or president of each Tribe, in writing, of the nature and purpose of the body, the anticipated outcome(s), the qualifications of the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The Tribal chair or president will determine whether or not to designate a person to serve on the body. When the DHFS is advised by a committee or council created by state statute with appointments made by the governor or other appointing authorities outside the DHFS, the DHFS will give similar notice to each Tribal chair or president allowing the opportunity for him or her to identify interest in appointment consideration.

If the body requires Tribal representation, but the size of the body, as determined by the DHFS, precludes a representative from each Tribe, then the DHFS will request representation from Tribes on a rotating basis so that, over time, all interested Tribes will be represented on various bodies. The DHFS Tribal Affairs office will maintain an ongoing list of Tribal representatives and their Tribal affiliation to assist the DHFS and divisions in assuring representation of all Tribes which have expressed an interest in having such representation. When more than one Tribe indicates interest in being represented, the DHFS shall allow representatives of at least two Tribes to participate. A Tribe may request a representative from another Tribe or Indian organization to assist or substitute for the Tribal representatives.

### *B. Short-Term and Ad Hoc Bodies*

If the DHFS, a division, or a subunit of a division establishes any external ad hoc committee or workgroup which affects Tribes, the appropriate individual in the DHFS, division, or division subunit shall contact the Tribal program directors in the program that are affected by the work of the committee or workgroup. The contact shall initially be in writing and shall include a description of the nature and purpose of the body, the anticipated outcome, the qualifications of the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The Tribal program director, after any necessary consultation, will determine whether or not to appoint a person to serve on the committee or workgroup. If the body requires Tribal representation, but the size of the body, as determined by the DHFS, precludes a representative from each Tribe, then the DHFS will request representation from Tribes on a rotating basis so that, over time, all Tribes will be represented on various bodies. The DHFS Tribal Affairs office will maintain an ongoing list of Tribal representatives and their Tribal affiliation to assist the DHFS and divisions in assuring representation of all Tribes which have expressed an interest in having such representation. When more than one Tribe indicates interest in being represented, the DHFS shall allow representatives of at least two Tribes to participate. A Tribe may request a representative from another Tribe or Indian organization to assist or substitute for the Tribal representatives.

For distribution at the annual meeting under Section IV. A., the DHFS will prepare a summary of the previous year's committees and other bodies and indicate the Tribal affiliation of Tribal representatives to those bodies.

## Appendix A GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

*“American Indian Tribal government”* means a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws and treaties of the United States of America, which also may be known as a “federally recognized Indian Tribe”.

*“County department of human services”* means an agency that is part of a county governmental structure with the powers and duties described in sec. 46.23, Wis. Stats.

*“County department of social services”* means an agency that is part of a county governmental structure with the powers and duties described in sec. 46.215 or 46.22, Wis. Stats.

*“County 51.42 board”* means a Community Program Board within a county, which delineates the county's responsibilities for the provision of a range of services to citizens with disabilities, either mental health, substance abuse or developmental disabilities.

*“County 51.437 board”* means a Community Program Board within a county, which delineates the county's responsibilities for the provision of a range of services for citizens with developmental disabilities.

*“Cultural awareness and sensitivity”* means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

*“DHFS”* or *“Department”* means the Wisconsin Department of Health and Family Services.

*“DHFS Tribal Affairs Office”* means the subunit of the DHFS housed in the office of strategic finance, which has department-wide responsibility for contracting with and providing technical assistance on and to Tribes.

*“Division”* means a subunit of the DHFS responsible for the management, administration, and provision of programs and services in specific program areas. For purposes of this agreement, “division” relates to one or more of the following divisions: Children and Family Services, Disability and Elder Services; Health Care Financing; and Public Health.

*“Government-to-government”* means communication and dealings between sovereign governments, their agencies and other official entities.

*“Public health department”* means a local health department of a governmental entity that 1) has a local board of health, 2) a full-time local health officer who meets the necessary qualifications; 3) provides at least surveillance, investigation, control and prevention of communicable diseases, other disease prevention, health promotion and human health hazard control, and 4) regularly and systematically collect, assemble, analyze and make available information on the health of the community, including statistics on health status, community health needs and epidemiologic and other studies of health problems; develop public health policies and procedures for the community; involve key policymakers and the general public in determining a set of high priority public health services and assure access to these services to every member of the community; submit data, as requested, to the local public health data system established by the department; and act as an agent of the department, if designated by the secretary.

*“Sovereign”* means a state in which supreme authority is vested.